IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

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Madho Singh Bhati. Versus District Collector, Barmer & ors.

S.B. Civil Writ Petition No. 2210/2007

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Date of Order: May 17, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Dr. Pushpendra Singh, for the petitioner.
Mr. B.L. Tiwari, Deputy Government Advocate, for respondents.
Mr. M.S. Purohit, for respondent No.3.

BY THE COURT:

By the instant writ petition under Article 226 of the Constitution of India, the petitioner has challenged the order Annx. 8 dated 22-3-2007 placing the petitioner under suspension and also the proceedings initiated against him.

I have heard learned counsel for the parties.

The facts and circumstances giving rise to the instant writ petition are that the petitioner was working on the post of "Parcha Vitrak" cum Surveyor cum "Raksha-Prahari". The respondent No.3 issued a show cause notice dated 3-1-2007 Annx.1 calling explanation from the petitioner within three days stating in the show cause notice Annx.1 that an inspection was

made by the Authority issuing the notice on 3-1-2007 at 10:15 AM and at the relevant time, the petitioner was not found present in the office. A reply to the show cause notice was filed by the petitioner on 4-1-2007 (Annx.2) and it was explained therein that at the relevant time, the petitioner was not absent from duty but was present and it was further stated that he made the inspection of the office. It was further stated that being incharge of the Chowkidars, on 3-1-2007, at 9:45 AM, he inspected the solid waste-material pots and the taxis loading the solid-waste materials, which have been entered at serial No. 6 on page No.1 of the Duty Registrer. It has further been stated that despite the fact that the petitioner was present in the office, the notice Annx.1 has been issued unnecessarily. The petitioner has placed on record the notice issued to him vide Annx.1 dated 3-1-2007 and the reply to the notice dated 4-1-2007 (Annx.2) filed by him.

The notice Annx.1 is a show cause notice issued to the petitioner by the respondent No.2 stating therein that at 10:15 AM on 3-1-2007 , when the inspection was made, he was found absent and the explanation of the petitioner was called within three days. The petitioner filed the explanation Annx.2 on the very next day i.e. 4-1-2007 stating therein that he, along with the Parcha Vitran and Chowidars of Solid waste-material and Guards, was present in the office at 9:45 AM on 3-1-2007

and thereafter he inspected the solid waste-material boxes, the taxies loading solid waste-materials etc. and recorded his presence in the Duty Register of Guards it item No.6 on page 1 in the Inspection Diary maintained in the office and, thus he was present on duty at the very beginning of the duty hours of the relevant day. It has also been stated that this fact was brought to the notice of the respondent No.2 but the respondent No.2 did not accept his explanation vide Annx.2. It has also been stated that the petitioner is also a Guards Incharge and, therefore, the concerned records and registers are kept and maintained by him. The petitioner had shown the attendance registered to the respondent No.2; however a question marks was put in the attendance register by endorsing the time 10:20 AM. It has further been stated that the question mark was made against the name of one Paras Mal, Cashier also, but under the pressure, the respondent No.2 did not issue such a notice to Paras Mal, Cashier, which, according to the petitioner, shows step-motherly treatment of the respondent No.2 towards the petitioner. The respondent No.2 considered this be an ordering language used by the petitioner and issued a show cause notice Annx.5 dated 11-1-2007 stating therein that in the reply to the show cause notice Annx.1 dated 3-1-2007, the petitioner has used the ordering language. The petitioner has also placed on record various certificates issued by the respondent authorities

appreciating his services, including a certificate issued by Mr.R.K. Maheshwari, working as the Executive Officer, Municipal Board, Balotra, appreciating his services.

A reply to the writ petition has been filed by the respondents supported by an affidavit of Mr. R.K. Maheshwar, who earlier issued an appreciation certificate in favour of the petitioner, stating therein that the petitioner is in the habit of making complaints and generally the complaints made by the petitioner are found false and, thus, the respondents have rightly initiated the proceedings against the petitioner.

I have carefully gone through the notice Annx.1 and the reply Annx.2 filed by the petitioner. On careful perusal of the reply Annx.2, in my view, it cannot be said that the petitioner has used any derogative language while submitting his explanation/reply Annx.2. Apart from stating the facts and the events which took place on the relevant date when the office was checked by the respondent No.2, the petitioner stated in the reply/explanation Annx.2 that a question mark was also put in the attendance register against the name of Paras Mal Cashier but no action has been taken against him and thereby the respondent No.2 has behaved in a discriminatory manner and showed step-motherly treatment against the petitioner. In my view, it cannot be said to be a derogative or ordering language. If an employee complains of a discriminatory treatment, in my

view, it cannot be said to be a misconduct warranting any disciplinary action. Therefore, the impugned order Annx.8 dated 23-3-2006 placing the petitioner under suspension and initiating disciplinary proceedings cannot be sustained in the eyes of law and the same, being wholly unjust, deserve to be quashed.

In the result, the writ petition is allowed. The impugned order Annx.8 dated 23-3-2007 and the disciplinary proceedings initiated against the petitioner are quashed. There shall be no order as to costs.

(H.R. PANWAR), J.

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